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Dkt. 53437-A-PCT-US

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants: Philip O. Livingston and Govindaswami
Ragupathi

Serial No.: 09/534,711 Examiner: C.Yaen

Filed: March 24, 2000 Group Art Unit: 1642

For: FUCOSYL GM1-KLH CONJUGATE VACCINE AGAINST
SMALL CELL LUNG CANCER

1185 Avenue of the Americas
New York, New York 10036
March 11, 2004

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

**RESPONSE TO MARCH 2, 2004 NOTICE
OF NON-COMPLIANT AMENDMENT (37 C.F.R. 1.121)**

This is a Response to a Notice of Non-Compliant Amendment (37 C.F.R. 1.121) ("Notice") issued by the United States Patent and Trademark Office on March 2, 2004 concerning the above-identified application. A copy of the Notice is attached as **Exhibit A**. A Response to the Notice is due one month from its mailing date, i.e., by April 2, 2004. Accordingly, this Response is being timely filed.

The Notice states that the amendment document filed on June 27, 2003 is non-compliant because: (1) a complete listing of all of the claims is not present, (2) the claims of the amendment paper have not been presented in ascending numerical order, and (3) Other: A marked-up version is needed or please send a complete list of all the claims.

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The Notice further states that in order for the amendment document to be compliant, correction of the above-identified omissions/provisions is required.

In response to the Notice, the Office is respectfully informed that applicants did not file an amendment document on June 27, 2003 in the present application. What was filed on the date indicted was a "**Communication To Correct Error In Filing Receipt**" ("Communication"). Included as Exhibit C to the Communication was a copy of a previously filed "Preliminary Amendment To The Accompanying Continuation Application Filed Under 37 C.F.R. §1.53". The subject Preliminary Amendment had been filed in this application on March 24, 2000, i.e., three years prior to June 27, 2003. The Amendment copy was provided to the Office as an exhibit to the Communication because, together with the Declaration and Power of Attorney filed in this application (provided as Exhibit B to the Communication) it contains the correct priority data for this case which the Office would need to make the requested correction to the Filing Receipt. A copy of applicant's June 27, 2003 Communication To Correct Error In Filing Receipt is provided as Exhibit B to this Response.

In summary, therefore, applicants are not seeking entry of the Preliminary Amendment attached as Exhibit C to the Communication filed on June 27, 2003. The subject Preliminary Amendment was originally received by the Office on March 24, 2000. A copy of the return postal card, stamped by the Office, indicating receipt of the subject

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Preliminary Amendment on March 24, 2000, is provided herewith as **Exhibit C**. The subject Amendment was thereafter entered by the Office. Evidence of such entry is provided by the Office Action dated July 19, 2001 concerning this application wherein, on page 2 the Examiner stated, "Applicant's Preliminary Amendment filed March 24, 2000 (Paper No. 2/A) is acknowledged. Claims 2, 3, 9, 11-12, 14 have been amended and new claim 16 has been added. Accordingly, claims 1-16 are being examined." A copy of the transmittal sheet, Office Action Summary and page 2 of the subject Office Action is attached hereto as **Exhibit D**.

Therefore since no amendment document was filed on June 27, 2003 the Office is respectfully requested to reconsider and withdraw the Notice dated March 2, 2004. If a telephone interview would be of assistance in advancing prosecution of the subject application, applicants' undersigned attorneys invite the Examiner to telephone at the number provided below

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No fee is believed to be necessary with the filing of this Response. Should any fee be required, authorization is hereby provided to charge the required amount of such fee to Deposit Account No. 03-3125.

Respectfully submitted,

Mark A. Farley

I hereby certify that this correspondence is being deposited this date with the U.S. Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450

Mark A. Farley 3-11-04

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